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Phyllis M. Seavey, Avery B. Seavey, Nealle B.  
Seavey, Ronald Dawley, Dalton Management  
Company, LLC, and the Seavey Organization*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN L. EDMONDS, individually and as a managing  
general partner of Fifth and 106th Street Housing  
Company, Inc., Logan Plaza Associates, LP, Charles H.  
Associates a/k/a Charles H. Hill Associates, LP and as a  
limited partner of Church Home Associates, LP,

Plaintiffs,

-against-

ROBERT W. SEAVEY, individually and as a general  
partner of Fifth and 106th Street Housing Company, Inc.,  
Logan Plaza Associates, LP, Charles H. Associates a/k/a  
Charles H. Hill Associates, LP and as a limited partner of  
Church Home Associates, LP, et al.,

Defendants.

08 – CV – 5646 (HB)

**DECLARATION IN  
FURTHER SUPPORT OF  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

M. Darren Traub, an attorney admitted to practice before this Court, declares  
under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am associated with the law firm Herrick Feinstein, LLP, attorneys for  
defendants Robert W. Seavey, Phyllis M. Seavey, Avery B. Seavey, Nealle B. Seavey,  
Ronald Dawley, Dalton Management Company, LLC, and the Seavey Organization (the  
“Seavey defendants”). Marks, Paneth & Shron, LLP, sued here as “Marks, Paneth &  
Shron, Auditors” (“Marks Paneth”) is represented by the law firm of Wilson, Elser,

Moskowitz, Edelman & Dicker, LLP. I respectfully submit this declaration in further support of Defendants' motion pursuant to Federal Rule of Civil Procedure 56 seeking summary judgment dismissing the complaint in its entirety and granting judgment in favor of the Seavey Defendants on their counterclaims.

2. Attached hereto as Exhibit I is a copy of the relevant portions of the transcript of the eviction trial proceedings held in 5<sup>th</sup> and 106<sup>th</sup> *Street Associates v. Hal Harris*, Civil Court of the City of New York, County of New York, Index No. 78741/08 on July 8, 2009.<sup>1</sup>

3. For the reasons set forth in the accompanying reply memorandum of law, as well as the reasons set forth in their moving papers, Defendants respectfully request that this court issue an order pursuant to Fed. R. Civ. P. 56 granting summary judgment dismissing the plaintiff's complaint in its entirety and granting the Seavey Defendants summary judgment on their counterclaims.

Dated: New York, New York  
July 30, 2008

/s/ M. Darren Traub  
M. Darren Traub

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<sup>1</sup> Exhibits A through H were attached to my Declaration dated July 9, 2009, which was submitted in support of Defendants' motion for summary judgment.

# EXHIBIT I

1 CIVIL COURT OF THE CITY OF NEW YORK  
2 COUNTY OF NEW YORK: TRIAL TERM PART 75

3 -----  
4 5TH AND 106TH STREET ASSOCIATES,

5 PETITIONER,

6 -against-

7 INDEX NO.  
8 78741/08

9 HAL HARRIS - TENANT,  
10 "JOHN DOE"/"JANE DOE" - OCCUPANTS,

11 -----  
12 RESPONDENTS.

13 July 8, 2009  
14 Manhattan Civil Court  
15 111 Centre Street  
16 New York, New York 10013

17  
18 BEFORE: HONORABLE ARLENE P. BLUTH

19 APPEARANCES:

20 GUTMAN, MINTZ, BAKER & SONNENFELDT, P.C.  
21 Attorneys for Petitioner  
22 813 Jericho Turnpike  
23 New Hyde Park, New York 11040  
24 BY: NEIL SONNENFELDT, ESQ.

25 BREIER, DEUTSCHMEISTER, URBAN & FROMME, P.C.  
Attorneys for Respondents  
111 Broadway, Suite 810  
New York, New York 10006-1901  
BY: JASON S. DEUTSCHMEISTER, ESQ.

DEBRA FERRARO  
OFFICIAL COURT REPORTER

1 this action, the building passed?

2 A. Yes, that is my understanding.

3 Q. Now, you mentioned you have a management  
4 company, are you satisfied with the management of this  
5 company of the building?

6 A. I never said that I had a management  
7 company. I told you --

8 Q. Dalton Management?

9 A. How is that?

10 Q. Dalton Management, sir?

11 A. That isn't my management company. I told you  
12 a few moments ago, sir, that Dalton Management Company  
13 is the company that manages the building and that is  
14 owned by Robert Seavey's family and that the principal  
15 of that company is Phyllis Seavey, Mr. Seavey's wife.

16 Q. Fine, but do they manage this property for  
17 the Petitioner?

18 A. Yes, they do.

19 Q. And are you satisfied with their management  
20 of this building?

21 A. Yes, I am.

22 Q. Then my question to you now is, then why, if  
23 that is true, have you sued your partner, Mr. Seavey,  
24 in Federal Court for mismanagement of this property?

25 MR. SONNENFELDT: Objection, Your Honor.

1 A. There is no lawsuit --

2 THE COURT: Objection means don't say  
3 anything.

4 MR. SONNENFELDT: Objection, Your Honor. I  
5 think that it is completely out of line that  
6 Mr. Deutschmeister made that statement. I think  
7 it is completely irrelevant to this case. He is  
8 making a statement of fact that is not in evidence  
9 in any way and it seems very obvious that his only  
10 intention is to incite the jury and to bring  
11 something into this case that has no place in this  
12 case, and I think that Mr. Deutschmeister should  
13 be warned by the Court about proceeding in this  
14 fashion.

15 MR. DEUTSCHMEISTER: Your Honor --

16 THE COURT: Just a minute. Come up here  
17 because it ruins the whole purpose. If you don't  
18 want to incite the jury, you don't make these  
19 arguments in front of the jury.

20 (Whereupon, at this time, a discussion was  
21 held off the record.)

22 THE COURT: The objection is sustained.  
23 Don't answer the question.

24 May I remind the jury that a question in  
25 itself doesn't mean anything. Evidence is a

1 MR. SONNENFELDT: Who says --

2 THE COURT: You can't recall him, you're done  
3 with him. You don't have to come tomorrow,  
4 Mr. Edmonds.

5 Let the record reflect that when I just asked  
6 Mr. Deutschmeister if Mr. Edmonds could go and be  
7 released, Mr. Harris answered no, we want him here  
8 because we want to recall him.

9 Mr. Deutschmeister, in all fairness to him,  
10 said no, we can't recall him, . . .

11 MR. HARRIS: I said we want to recall him  
12 because he lied on the stand.

13 THE COURT: You behave, Mr. Harris.

14 MR. HARRIS: I behaved all day, Your Honor.

15  
16  
17 REPORTER'S CERTIFICATION, Certified to be a  
18 true and correct transcript of the original  
19 stenographic notes.

20  
21  
22   
23 DEBRA FERRARO

24 OFFICIAL COURT REPORTER  
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